

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 8**

Introduced by Wightman, 36.

Read first time January 8, 2009

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to registers of deeds; to amend sections  
2 25-529, 25-531, 25-2154, 33-109, and 52-1004, Reissue  
3 Revised Statutes of Nebraska, and sections 60-169 and  
4 77-3903, Revised Statutes Cumulative Supplement, 2008;  
5 to change and eliminate fees received by the clerks and  
6 registers of deeds; to harmonize provisions; to provide  
7 an operative date; to repeal the original sections;  
8 and to outright repeal section 33-112, Reissue Revised  
9 Statutes of Nebraska.  
10 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 25-529, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           25-529 The register of deeds of each county shall record  
4 such appointment as shall be filed under the provisions of section  
5 25-528 and any revocation thereof in the Miscellaneous Record,  
6 shall enter such instruments in the numerical index against the  
7 lands described therein, and shall be entitled to demand and  
8 receive fees as provided in sections 33-109 and 33-112. the fee  
9 provided in section 33-109.

10          Sec. 2. Section 25-531, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12          25-531 When the summons has been served or publication  
13 made, the action is pending so as to charge third persons with  
14 notice of pendency. While the action is pending no interest can  
15 be acquired by third persons in the subject matter thereof, as  
16 against the plaintiff's title. In all actions brought to affect the  
17 title to real property, the plaintiff may either at the time of  
18 filing his or her complaint or afterwards, file, or in case any  
19 defendant sets up an affirmative cause of action and demands relief  
20 which shall affect the title to real estate, he or she may, at the  
21 time of filing such answer or at any time afterwards, file with  
22 the clerk or register of deeds of each county in which the real  
23 estate thus to be affected, or any part thereof, is situated, a  
24 notice of the pendency of such action. The notice shall contain the  
25 names of the parties, the object of the action, and a description

1 of the property in such county sought to be affected thereby. If  
2 the action is for foreclosure of a mortgage, such notice shall  
3 contain the date of the mortgage, the parties thereto, and the  
4 time and place of recording the same. The clerk or register of  
5 deeds of such county shall record the notice thus filed and enter  
6 the same upon the numerical index of all lands, any part of which  
7 is included in the description in the notice, for which he or  
8 she shall be entitled to receive ~~filing fees in accordance with~~  
9 ~~sections 33-109 and 33-112,~~ the fee provided in section 33-109, to  
10 be paid by the person filing such notice, and which shall be taxed  
11 as part of the costs in the action. From the time of filing such  
12 notice the pendency of such action shall be constructive notice  
13 to any purchaser or encumbrancer to be affected thereby. Every  
14 person whose conveyance or encumbrance is subsequently executed or  
15 subsequently recorded shall be deemed to be a subsequent purchaser  
16 or encumbrancer and shall be bound by all proceedings taken in  
17 the action after the filing of such notice to the same extent  
18 as if he or she were made a party to the action. The court in  
19 which such action was commenced or any judge thereof may at any  
20 time thereafter on the application of any person aggrieved, on  
21 good cause shown, and on such notice as the court or judge may  
22 determine, order the notice to be canceled by the clerk or register  
23 of deeds of any county in which the notice may have been filed or  
24 recorded by filing a notice of release. In actions in which such  
25 notice is filed in a county or counties, other than the county in

1 which the action is pending, the county clerk or the register of  
2 deeds of the county in which the action was begun may cancel such  
3 notice by executing a written release under his or her hand and  
4 seal by reason of the order of the court or judge, and forward  
5 such release by mail to the county clerk or register of deeds of  
6 the county in which the notice has been filed or recorded, and  
7 which certificate such county clerk or register of deeds shall  
8 record in the records of his or her office. At any time after  
9 such notice of pendency is recorded, the party on whose behalf  
10 the same was filed or the party's attorney of record may cause  
11 the notice to be canceled in the office of the county clerk or  
12 register of deeds of any county in which the notice has been filed  
13 or recorded. Such cancellation may be made by written release in  
14 the same manner as such cancellations are entered on order of the  
15 court. For the service required by this section, the county clerk  
16 or register of deeds shall be entitled to charge and receive fees  
17 ~~in accordance with sections 33-109 and 33-112,~~ a fee in accordance  
18 with section 33-109, to be paid by the party causing the service to  
19 be performed.

20           Sec. 3. Section 25-2154, Reissue Revised Statutes of  
21 Nebraska, is amended to read:

22           25-2154 In all cases of foreclosure of mortgages in  
23 the several counties in the state, it shall be the duty of the  
24 clerk of the district court, on the satisfaction or payment of  
25 the amount of the decree, to forward to the register of deeds

1 a certificate setting forth the names of parties, plaintiff and  
2 defendant, descriptions of the premises mentioned in the decree,  
3 and the book and page where the mortgage foreclosed is recorded,  
4 for which certificate such clerk shall collect a fee of three  
5 ~~dollars,~~ the fee required pursuant to section 33-109 for recording  
6 the certificate, which amount shall be taxed as part of the costs  
7 in the case, and ~~said~~ such sum shall be paid to the register of  
8 deeds as ~~his~~ the fee for recording the certificate.

9           Sec. 4. Section 33-109, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11           33-109 The register of deeds and the county clerk shall  
12 receive for recording a deed, mortgage, or release, recording and  
13 indexing of a will, recording and indexing of a decree in a testate  
14 estate, recording proof of publication, or recording any other  
15 instrument, a fee of ~~five dollars per page-~~ ten dollars for the  
16 first page and six dollars for each additional page. The cost for  
17 a certified copy of any instrument filed or recorded in the office  
18 of county clerk or register of deeds shall be one dollar and fifty  
19 cents per page.

20           Sec. 5. Section 52-1004, Reissue Revised Statutes of  
21 Nebraska, is amended to read:

22           52-1004 (1) Beginning July 1, 1999, the uniform fee,  
23 payable to the Secretary of State, for presenting for filing  
24 and indexing and for filing and indexing each notice of lien or  
25 certificate or notice affecting the lien pursuant to the Uniform

1 Federal Lien Registration Act shall be ~~six dollars~~, two times the  
2 fee required for recording instruments with the register of deeds  
3 as provided in section 33-109. There shall be no fee for the filing  
4 of a termination statement. The uniform fee for each county more  
5 than one designated pursuant to subsection (1) of section 52-1001  
6 shall be ~~three dollars~~, the fee required for recording instruments  
7 with the register of deeds as provided in section 33-109. The  
8 Secretary of State shall deposit each fee received pursuant to  
9 this section in the Uniform Commercial Code Cash Fund. Of the fees  
10 received and deposited pursuant to this section, the Secretary of  
11 State shall remit ~~three dollars~~ the fee required for recording  
12 instruments with the register of deeds as provided in section  
13 33-109 to the register of deeds of a county for each designation  
14 of such county in a filing pursuant to subsection (1) of section  
15 52-1001.

16 (2) The Secretary of State shall bill the district  
17 directors of internal revenue or other appropriate federal  
18 officials on a monthly basis for fees for documents presented or  
19 filed by them.

20 Sec. 6. Section 60-169, Revised Statutes Cumulative  
21 Supplement, 2008, is amended to read:

22 60-169 (1) (a) Except as otherwise provided in subdivision  
23 (b) of this subsection, each owner of a vehicle and each person  
24 mentioned as owner in the last certificate of title, when the  
25 vehicle is dismantled, destroyed, or changed in such a manner

1 that it loses its character as a vehicle or changed in such a  
2 manner that it is not the vehicle described in the certificate  
3 of title, shall surrender his or her certificate of title to the  
4 county clerk or designated county official of the county where such  
5 certificate of title was issued or, if issued by the department,  
6 to the department. If the certificate of title is surrendered  
7 to the county clerk or designated county official, he or she  
8 shall, with the consent of any holders of any liens noted thereon,  
9 enter a cancellation upon his or her records and shall notify the  
10 department of such cancellation. If the certificate is surrendered  
11 to the department, it shall, with the consent of any holder of any  
12 lien noted thereon, enter a cancellation upon its records.

13 (b)(i) In the case of a mobile home or manufactured  
14 home for which a certificate of title has been issued, if such  
15 mobile home or manufactured home is affixed to real property in  
16 which each owner of the mobile home or manufactured home has any  
17 ownership interest, the certificate of title may be surrendered  
18 for cancellation to the county clerk or designated county official  
19 of the county where such certificate of title is issued or, if  
20 issued by the department, to the department, if at the time of  
21 surrender the owner submits to the county clerk, the designated  
22 county official, or the department an affidavit of affixture on a  
23 form provided by the department that contains all of the following,  
24 as applicable:

25 (A) The names and addresses of all of the owners of

1 record of the mobile home or manufactured home;

2 (B) A description of the mobile home or manufactured  
3 home that includes the name of the manufacturer, the year of  
4 manufacture, the model, and the manufacturer's serial number;

5 (C) The legal description of the real property upon which  
6 the mobile home or manufactured home is affixed and the names of  
7 all of the owners of record of the real property;

8 (D) A statement that the mobile home or manufactured home  
9 is affixed to the real property;

10 (E) The written consent of each holder of a lien duly  
11 noted on the certificate of title to the release of such lien and  
12 the cancellation of the certificate of title;

13 (F) A copy of the certificate of title surrendered for  
14 cancellation; and

15 (G) The name and address of an owner, a financial  
16 institution, or another entity to which notice of cancellation of  
17 the certificate of title may be delivered.

18 (ii) The person submitting an affidavit of affixture  
19 pursuant to subdivision (b)(i) of this subsection shall swear or  
20 affirm that all statements in the affidavit are true and material  
21 and further acknowledge that any false statement in the affidavit  
22 may subject the person to penalties relating to perjury under  
23 section 28-915.

24 (2) If a certificate of title of a mobile home or  
25 manufactured home is surrendered to the county clerk or designated

1 county official, along with the affidavit required by subdivision  
2 (1)(b) of this section, he or she shall enter a cancellation upon  
3 his or her records, notify the department of such cancellation,  
4 forward a duplicate original of the affidavit to the department,  
5 and deliver a duplicate original of the executed affidavit under  
6 subdivision (1)(b) of this section to the register of deeds for  
7 the county in which the real property is located to be filed  
8 by the register of deeds. The county clerk or designated county  
9 official shall be entitled to collect ~~fees~~ a fee from the person  
10 submitting the affidavit in accordance with ~~sections 33-109 and~~  
11 ~~33-112~~ section 33-109 to cover the costs of filing such affidavit.  
12 If the certificate of title is surrendered to the department,  
13 along with the affidavit required by subdivision (1)(b) of this  
14 section, the department shall enter a cancellation upon its records  
15 and deliver a duplicate original of the executed affidavit under  
16 subdivision (1)(b) of this section to the register of deeds for  
17 the county in which the real property is located to be filed by  
18 the register of deeds. The department shall be entitled to collect  
19 fees from the person submitting the affidavit in accordance with  
20 sections 33-109 and 33-112 to cover the costs of filing such  
21 affidavit. Following the cancellation of a certificate of title  
22 for a mobile home or manufactured home, neither the county clerk,  
23 the designated county official, nor the department shall issue a  
24 certificate of title for such mobile home or manufactured home,  
25 except as provided in subsection (5) of this section.

1           (3) If a mobile home or manufactured home is affixed to  
2 real estate before June 1, 2006, a person who is the holder of a  
3 lien or security interest in both the mobile home or manufactured  
4 home and the real estate to which it is affixed on such date may  
5 enforce its liens or security interests by accepting a deed in lieu  
6 of foreclosure or in the manner provided by law for enforcing liens  
7 on the real estate.

8           (4) A mobile home or manufactured home for which the  
9 certificate of title has been canceled and for which an affidavit  
10 of affixture has been duly recorded pursuant to subsection (2) of  
11 this section shall be treated as part of the real estate upon which  
12 such mobile home or manufactured home is located. Any lien thereon  
13 shall be perfected and enforced in the same manner as a lien on  
14 real estate. The owner of such mobile home or manufactured home may  
15 convey ownership of the mobile home or manufactured home only as a  
16 part of the real estate to which it is affixed.

17           (5) (a) If each owner of both the mobile home or  
18 manufactured home and the real estate described in subdivision  
19 (1) (b) of this section intends to detach the mobile home or  
20 manufactured home from the real estate, the owner shall do both of  
21 the following: (i) Before detaching the mobile home or manufactured  
22 home, record an affidavit of detachment in the office of the  
23 register of deeds in the county in which the affidavit is recorded  
24 under subdivision (1) (b) of this section; and (ii) apply for a  
25 certificate of title for the mobile home or manufactured home

1 pursuant to section 60-147.

2 (b) The affidavit of detachment shall contain all of the  
3 following:

4 (i) The names and addresses of all of the owners of  
5 record of the mobile home or manufactured home;

6 (ii) A description of the mobile home or manufactured  
7 home that includes the name of the manufacturer, the year of  
8 manufacture, the model, and the manufacturer's serial number;

9 (iii) The legal description of the real estate from which  
10 the mobile home or manufactured home is to be detached and the  
11 names of all of the owners of record of the real estate;

12 (iv) A statement that the mobile home or manufactured  
13 home is to be detached from the real property;

14 (v) A statement that the certificate of title of the  
15 mobile home or manufactured home has previously been canceled;

16 (vi) The name of each holder of a lien of record against  
17 the real estate from which the mobile home or manufactured home  
18 is to be detached, with the written consent of each holder to the  
19 detachment; and

20 (vii) The name and address of an owner, a financial  
21 institution, or another entity to which the certificate of title  
22 may be delivered.

23 (6) An owner of an affixed mobile home or manufactured  
24 home for which the certificate of title has previously been  
25 canceled pursuant to subsection (2) of this section shall not

1 detach the mobile home or manufactured home from the real estate  
2 before a certificate of title for the mobile home or manufactured  
3 home is issued by the county clerk, designated county official,  
4 or department. If a certificate of title is issued by the county  
5 clerk, designated county official, or department, the mobile home  
6 or manufactured home is no longer considered part of the real  
7 property. Any lien thereon shall be perfected pursuant to section  
8 60-164. The owner of such mobile home or manufactured home may  
9 convey ownership of the mobile home or manufactured home only by  
10 way of a certificate of title.

11 (7) For purposes of this section:

12 (a) A mobile home or manufactured home is affixed to real  
13 estate if the wheels, towing hitches, and running gear are removed  
14 and it is permanently attached to a foundation or other support  
15 system; and

16 (b) Ownership interest means the fee simple interest in  
17 real estate or an interest as the lessee under a lease of the real  
18 property that has a term that continues for at least twenty years  
19 after the recording of the affidavit under subsection (2) of this  
20 section.

21 (8) Upon cancellation of a certificate of title in the  
22 manner prescribed by this section, the county clerk or designated  
23 county official and the department may cancel and destroy all  
24 certificates and all memorandum certificates in that chain of  
25 title.

1           Sec. 7. Section 77-3903, Revised Statutes Cumulative  
2 Supplement, 2008, is amended to read:

3           77-3903 (1)(a) A notice of lien provided for in the  
4 Uniform State Tax Lien Registration and Enforcement Act upon real  
5 property shall be presented in the office of the Secretary of  
6 State. Such notice of lien shall be transmitted by the Secretary  
7 of State to and filed in the office of the register of deeds  
8 by the register of deeds of the county or counties in which the  
9 real property subject to the lien is situated as designated in  
10 the notice of lien. The register of deeds shall enter the notice  
11 in the alphabetical state tax lien index, showing on one line  
12 the name and residence of the person liable named in such notice,  
13 the last four digits of the social security number or the federal  
14 tax identification number of such person, the Tax Commissioner's  
15 or Commissioner of Labor's serial number of such notice, the date  
16 and hour of filing, and the amount due. Such presentments to the  
17 Secretary of State may be made by direct input to the Secretary of  
18 State's data base or by other electronic means. All such notices  
19 of lien shall be retained in numerical order in a file designated  
20 state tax lien notices, except that in offices filing by the roll  
21 form of microfilm pursuant to section 23-1517.01, the original  
22 notices need not be retained. A lien subject to this subsection  
23 shall be effective upon real property when filed by the register of  
24 deeds as provided in this subsection.

25           (b) A notice of lien provided for in the Uniform State

1 Tax Lien Registration and Enforcement Act upon personal property  
2 shall be filed in the office of the Secretary of State. The  
3 Secretary of State shall enter the notice in the state's central  
4 tax lien index, showing on one line the name and residence of the  
5 person liable named in such notice, the last four digits of the  
6 social security number or the federal tax identification number  
7 of such person, the Tax Commissioner's or Commissioner of Labor's  
8 serial number of such notice, the date and hour of filing, and the  
9 amount due. Such filings with the Secretary of State may be filed  
10 by direct input to the Secretary of State's data base or by other  
11 electronic means. All such notices of lien shall be retained in  
12 numerical order in a file designated state tax lien notices.

13 (2) Beginning July 1, 1999, the uniform fee, payable  
14 to the Secretary of State, for presenting for filing, releasing,  
15 continuing, or subordinating or for filing, releasing, continuing,  
16 or subordinating each tax lien pursuant to the Uniform State Tax  
17 Lien Registration and Enforcement Act shall be ~~six dollars.~~ two  
18 times the fee required for recording documents with the register  
19 of deeds as provided in section 33-109. There shall be no fee for  
20 the filing of a termination statement. The uniform fee for each  
21 county more than one designated pursuant to subdivision (1)(a) of  
22 this section shall be ~~three dollars.~~ the fee required for recording  
23 documents with the register of deeds as provided in section 33-109.  
24 The Secretary of State shall deposit each fee received pursuant  
25 to this section in the Uniform Commercial Code Cash Fund. Of the

1 fees received and deposited pursuant to this section, the Secretary  
2 of State shall remit ~~three dollars~~ the fee required for recording  
3 documents with the register of deeds as provided in section 33-109  
4 to the register of deeds of a county for each designation of such  
5 county in a filing pursuant to subdivision (1)(a) of this section.

6 (3) The Secretary of State shall bill the Tax  
7 Commissioner or Commissioner of Labor on a monthly basis for fees  
8 for documents presented to or filed with the Secretary of State.  
9 No payment of any fee shall be required at the time of presenting  
10 or filing any such lien document.

11 Sec. 8. This act becomes operative on January 1, 2010.

12 Sec. 9. Original sections 25-529, 25-531, 25-2154,  
13 33-109, and 52-1004, Reissue Revised Statutes of Nebraska,  
14 and sections 60-169 and 77-3903, Revised Statutes Cumulative  
15 Supplement, 2008, are repealed.

16 Sec. 10. The following section is outright repealed:  
17 Section 33-112, Reissue Revised Statutes of Nebraska.